THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 24625 of 2004

23-11-2006

Between:-

Pydi Giridharababu and another.

Petitioners

And

The Land Acquisition Officer & Special Tahasildar (L.A.),
Revenue Division, Visakhapatnam

Respondent

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 24625 of 2004

Oral order:

The singular grievance in this writ petition is as to the conduct of respondent in insisting that the petitioners furnish a bank guarantee for payment of the amount awarded as per Award No. 2 of 2002 dated 31-07-2002.

There is a chequered chronology of facts. Petitioners and other members of the family are owners of an extent of Ac.02-35 cents in survey No.1/2 of Madhavadhara village, Visakhapatnam Urban Mandal, Visakhapatnam district. The extent of Ac.02-35 cents was acquired for construction of defence quarters called as NSTL Phase III, in 1988. By the time of initiation of land acquisition proposals, out of total extent of Ac.02-35 cents acquired, Ac.01-27 cents was declared as surplus under the provisions of the Urban Land Ceiling & Regulation Act, 1976 (for short the 'ULC Act'). In the circumstances, the respondent initiated acquisition proceedings only in respect of Ac.01-08 cents and Award No. 1 of 1991 dated 27-03-1991 was passed.

Though initially the family of the petitioners was declared as 'surplus land holders' to the extent of Hec. 6.7460 square meters under the ULC Act, they preferred W.P.No.4025 of 1992 thereagainst. This court, by the order dated 29-06-1995, allowed the writ petition and

directed the competent authority under the ULC Act to determine the computation afresh. Consequent thereto, by the order dated 11-10-1995, the competent authority declared the family of the petitioners as 'surplus land holders' to the extent of Hec. 0.1065 square meters instead of Hec. 6.7460 square meters earlier. As a consequence of this re-computation and the order of the competent authority dated 11-10-1995, an extent of Ac.0-85 cents in survey No.1/2 became non-surplus out of the extent of Ac.01-27 cents earlier treated as 'surplus' and therefore excluded from the acquisition proceedings.

Consequent to the above re-determination under the ULC Act, the State issued a fresh notification under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') on 23-12-2000 proposing acquisition of Ac.0-85 cents. Since possession of the land was taken much earlier, enquiry under Section 5A of the Act was dispensed with. The declaration under Section 6 of the Act was issued on 24-12-2000. However, the State failed to pass an award. Thereupon, one of the family members of the petitioners filed W.P.No. 5339 of 2002 seeking passing of the award. By the order dated 12-04-2002, this court directed the respondent herein to pass award. Constrained by the Mandamus, the respondent passed Award No.2 of 2002 dated 31-07-2002. As per the said Award, Rs.15,31,920-00 was determined as the compensation payable to the petitioners family. However, without paying the compensation, the amount was deposited in the civil court even though there was no *inter se* disputes between the members of the petitioners family.

The petitioners again had to seek judicial review. They filed W.P.No.24079 of 2002 questioning the conduct of the respondent depositing the amount in the civil court. By the order dated 24-01-

2003, this court, even after noticing the averment made in the counter affidavit by the State observed that "…even out of the un-surplus area, there is a dispute with regard to Ac.0-12 cents and in respect of which, respondents are contemplating to file an appeal." and held that as re-computation by the competent authority under the ULC Act was ordered on 11-10-1995, but no appeal was filed by the State thereagainst, there was no justification for the State to refuse to pay the amount (Award already passed in Award No.2 of 2002 dated 31-07-2002). Consequent on this reasoning, a learned single Judge of this court directed, by the order dated 24-01-2003 in W.P.No. 24079 of 2002, that the respondent should make payment in terms of the Award No.2 of 2002 dated 31-07-2002.

Despite the above order of this court, the State disregarding the direction issued by this court, failed to pay the compensation as per Award No. 2 of 2002 dated 31-07-2002. The petitioners thereupon filed Contempt Case being C.C.No.540 of 2003. At that stage, the respondent paid the compensation to the petitioners family, but on condition of the petitioners furnishing bank guarantee for Rs.2,16,300-00, an amount, which, in view of the respondent constitutes the compensation for the component of Ac.0-12 cents in survey No.1/2, which extent was in an embryonic process of being determined as 'excess land' in respect of one of the members of the petitioners family.

It requires to be noticed that as on the date the respondent was insisting on the petitioners furnishing a bank guarantee, there was no proceeding determining the extent of Ac.0-12 cents as 'excess land'. There is no such order of the competent authority even today. Nevertheless, the respondent arbitrarily and without any justification declined to pay compensation as per the award with no justification for keeping physical custody of the amount.

Having regard to the recidivist arbitrariness of the respondent, including the conduct of respondent in insisting on furnishing of bank guarantee for payment of Rs.2,16,300-00 out of the compensation award under Award No. 2 of 2002 dated 31-07-2002, the petitioners filed this writ petition seeking appropriate relief.

The respondent has filed a counter affidavit on 24-02-2005. To the extent relevant and material, the answering respondent's averments read as under:

> *"4. In reply to the averments made in Para 6 of the Petitioners' affidavit it is submitted that on further verification, the Special Officer & Competent Authority, Urban Land Ceilings, Visakhapatnam found that erroneous computation of extent to the holding of Smt. Sanapala Bhoodevi has come to light in Sy.No.1/2 of Madhavadhara. It is submitted that Smt. Sanapala Bhoodevi, W/o. late Ramaiah, one of the five daughters of Sri Pydi Appanna, shall have to devolve an extent of Ac.0-12 cents being 1/7th share of the holding of Ac.0-85 cents in Sy.No.1/2 of Mahdvadhara belonging to her deceased mother Smt. Pydi Narayanamma in addition to her original holding of Ac.0-85 cents which she acquired through Registered sale document No.2791/70 dated 4-7-1970. Thereby the total extent held by Smt. Sanapala Bhoodevi in Sy.No. 1/2 of Madhavadhara is Ac.0-97 cents i.e., Hec.0.3931 Sq. Mts., but not Ac.0-85 cents i.e., Hec. 0.3440 Sq. Mts., as computed against her holding. Had the total extent of Ac.0-97 cents held by the declarant in Sy.No.1/2 of Madhavadhara been computed, there should have been Ac.0-12 cents i.e., Hec. 0.0491 Sq. Mts., of surplus in Sy.No.1/2 of Madhavadhara against the holding of the declarant and in case if that erroneous computation of the extent is ordered to be notified, an extent of Ac.0-12 cents in Sy.No.1/2 of Madhavadhara would be added to the surplus extent already determined in other survey Numbers against the holding of the declarant Smt. Sanapala Bhoodevi. Hence the Special Officer & Competent Authority has addressed a letter bearing No. C.C. 3480/76/B2 dated 31-08-2001 to the Chief Commissioner of Land Administration, Andhra Pradesh, Hyderabad, to consider the above aspect and to pass orders in the Appeal already filed under Section 33 of the Act by Smt. Sanapala Bhoodevi. Later the Special Officer & Competent Authority, U.L.C. Visakhapatnam, informed to this Office through his Letter dated 17-7-2003 that the Chief Commissioner of*

Land Administration, Andhra Pradesh, Hyderabad, has disposed of the Appeal filed under Section 33 of U.L.C. Act vide his Proceedings No. VSP/7/96 dated 21-3-2003 remanding the matter to him for fresh computation of holdings of the declarant after giving an opportunity to the legal heirs of the deceased declarant Smt. Sanapala Bhoodevi and the enquiry is pending with him.

4. In reply to the averments made in Para 6 of the Petitioners" affidavit it is submitted that in pursuance of the orders of this Hon'ble Court in W.P.No. 24079/2002 dated 24-1-2003, the entire compensation amount of Rs.15,31,920/- was paid to the petitioners on obtaining Bank guarantee for an amount of Rs.2,16,300/- for the costs of 0-12 cents for which land ceiling aspect is pending with the Special Officer & Competent Authority, U.L.C., Visakhapatnam, on remand by the Chief Commissioner of Land Administration, Andhra Pradesh, Hyderabad. In view of the enquiry is still pending with the Special Officer & Competent Authority, U.L.C., Visakhapatnam in respect of Ac.0-12 cents of land, the Bank guarantee has been obtained from the Petitioners. Till the matter is disposed of by the Special Officer & Competent Authority, U.L.C. Visakhapatnam, the Bank guarantee is required to be continued, or else the Government would be put to irreparable loss and injury in the event of Ac.0-12 cents is declared as surplus. Therefore, the averment of the Petitioners that the Bank guarantee is not required and it has to be released is not tenable. The relief prayed for by the petitioners is not sustainable under law."

From the respondent's counter dated 24-02-2005, it is apparent that apart from the Chief Commissioner of Land Administration having remanded the matter to the Special Officer, Urban Land Ceiling on 21-03-2003, there is on record no order of the competent authority determining the extent of Ac.0-12 cents as 'excess land' under the provisions of the ULC Act in respect of Smt. Sanapala Bhoodevi. In any event, the respondent has no authority, power or jurisdiction to insist that the petitioners furnish a bank guarantee for payment of the amount awarded as compensation for the land acquired under the award and pursuant to the notification under Section 4 (1) of the Act for an extent of Ac.0-85 cents which was proposed for acquisition,

declared for acquisition, the entire process of acquisition completed and an award was passed. That award constitutes the legal foundation for the claimants' right to compensation under the award. The respondent, as a land acquisition officer, has no power, authority or jurisdiction to interdict the destination and payment of the compensation amount. He cannot sit in judgment nor is he constituted the guardian to generally safeguard the State revenues, beyond legal exercise of powers. If the State feels aggrieved, the State could take appropriate measures in a manner known to law. It is however not open to the respondent to create an independent architecture of law.

It is not as though that on an eventual determination of the petitioners or some members of their family being found to be having land in 'excess' of the ceiling area, the amount of compensation paid for this property under the Award No.2 of 2002 could be recovered by the State. The State has a plentitude of remedies, if under no specified statutory environment, then under the general law of the land. It can institute proceedings for recovery of the amount paid in excess of the entitlement. However for the respondent to insist on the petitioners' furnishing a bank guarantee, there appears no warrant or justification in law. Since the respondent without any established and legal authority has interdicted and caused unlawful hurdles to the payment of compensation, by insistence on furnishing a bank guarantee by the petitioners, the respondent has caused the petitioners a legal injury without any authority of law. As a public official, the respondent is seen to have transgressed the limits of his authority and to have acted arbitrarily. For this, the respondent is liable to compensate the petitioners.

On the aforesaid analysis, the writ petition is allowed with costs. The respondent is directed to forthwith return the bank guarantee

No.05/2003-04 dated 26-07-2003 furnished by the petitioners drawn on the State Bank of Hyderabad, Muralinagar branch, Visakhapatnam (for Rs.2,16,300-00). The respondent shall also pay the petitioner damages for the unlawful injury in an amount of Rs.5,000-00 (Rupees five thousands only). The State of Andhra Pradesh is however at liberty to recover the amount from the erring officer, after following due process of law. The amount of damages shall be paid in the first instance by the State.

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GODA RAGHURAM, J

Dated:23-11-2006
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